IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4461 OF 2007

Kishore Murlidhar Mani & Anr..... ....Petitioners
V/s
Rajan Chandru Mani & Ors..... ....Respondents.

Mr.Rafiq Dada, Sr.Adv. With Mr.H.S.Khokhawala i/by M.G.Gawde, Adv. For the petitioners.

Mr.Rumi H. Mirza, Adv. For the respondent No.2.

CORAM: A.P.DESHPANDE, J.
6/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioner No.1 Kishor and husband of petitioner No.2 Jawahar are the sons of one Smt.Kamla Murlidhar Mani who was allotted a suit property as she was displaced person. The allotment is said to be of the year 1950. The respondent Nos. 1 and 2 are the children of one Chandru Mani who is real brother of petitioner No.1. The original allottee left behind her four sons by name Kishore, Jawahar, Chandru and Indur so also a daughter by name Aruna. I am informed that Indur and Aruna have given up their respective right to the suit property. It is the case of the petitioners that till the year 2004 the rent receipts were issued in the name of the original allottee despite her death long back. Sometime in the year 2004-05 the petitioners moved an application before Settlement Commissioner making a request that the rent receipts be issued in the name of petitioner No.1 and the husband of petitioner No.2 as they are legal representatives of the deceased allottee

in possession of the property and as they are paying the rent regularly. The said application was contested by respondent Nos. 1 and 2 contending that they have also a share in the property and their names as well need to be included in place of name of deceased original allottee Kamla M.Mani.

2. It is the case of the petitioner that all throughout the proceedings were conducted before the Settlement Commissioner as the first authority or fact finding authority. The proceedings were directed to be conducted even after repeal of Displaced Persons (C & R) Act, 1954 by virtue of an interim order passed by this Court on 14.12.06 granting relief in terms of prayer (f) in PIL No.52/06. The grievance of the present petitioners is that though the proceedings were being conducted before the Settlement Commissioner the impugned order has been passed by the Chief Settlement Commissioner and that too by treating the said application as revision petition. The grievance is that under the provisions of repealed act the order passed by the Settlement Commissioner is appealable and/or revisable before the Chief Settlement Commissioner and thus passing of the impugned order by the Chief Settlement Commissioner goes to frustrate the remedy of appeal or revision available to the present petitioners against the impugned order. My attention is invited by learned senior counsel Shri Rafiq Dada to sections 22, 23 and 24 of the Displaced Persons (C & R) Act, 1954 to indicate that the orders passed by the Settlement Commissioner are subject to appeal and/or revision before the Chief Settlement Commissioner. In view of the said contention a limited prayer is made for remand of the matter to the Settlement Commissioner for afresh decision in accordance with law so that the petitioners' right of appeal and/or revision is not frustrated. Learned counsel for the respondents submits that wrong mention of nomenclature made in the impugned

order describing the order as an order passed by revision petition cannot by itself be a ground for setting aside the impugned order if otherwise the same is sustainable in law. It is not only a question of misnomer of the Application as Revision but the same is in fact adjudicated by the Chief Settlement Commissioner. The very fact that the Chief Settlement Commissioner is appellate and/or revisional authority under the repealed act then adjudication of the application by the Settlement Commissioner becomes imperative in as much as the statute provides for appellate or revisional remedy to a litigant who is aggrieved by an order passed by the Settlement Commissioner. In view of the provisions contained in Chapter 4 of the repealed act I have no iota of doubt in my mind that adjudication of the application filed by the petitioners for recording of their names in place of deceased allottee's name by the Chief Settlement Commissioner goes to negate a statutory right of appeal and/or revision which is vested in the petitioners and hence the impugned order is wholly unsustainable in law requiring interference of this Court in exercise of writ jurisdiction.

3. Before I conclude it need to be stated that the impugned order has already been acted upon and names of the present petitioners so also respondent Nos. 1 and 2 are taken on record in place of name of original allottee Kamla M. Mani. The said mutation of the names in the record is not required to be disturbed, at this stage. Suffice it to state that the names recorded pursuant to the impugned order would be subject to final decision of the application moved by the present petitioners. Learned counsel for the petitioners submits that the petitioners would continue to pay the rent as they are in possession of the suit flat and shall not claim any equity on that count for the payments made from now onwards. Learned counsel for the respondents has no objection for this arrangement. Hence I order accordingly. Leaving all issues open to be

agitated, Writ petition is partly allowed. Impugned order dated 28/5/07 passed by the Chief Settlement Commissioner purported to have been passed in revision petition No.8/07 is quashed and set aside. On concession of the learned advocates given on behalf of their respective clients I direct that the respondent Nos. 1 and 2 shall not disturb the exclusive possession of the petitioners over the suit flat. The petitioners shall not part with possession of suit flat and shall also not create third party interest in the suit flat till final decision of the proceedings. The names entered in the record pursuant to the impugned order shall also be subject to final decision of the application moved by the petitioners. Needless to mention that the Settlement Commissioner shall decide the application moved by the petitioners uninfluenced by observations made in the impugned order by the Chief Settlement Commissioner. Rule made absolute in above terms.

6.9.07